APPENDIX 1

Texts of Constitutional Provisions and Statutes Involved

The Fourteenth Amendment to the Constitution of the United States:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Excerpts From Louisiana Constitution and Statutes

Louisiana Constitution

Article 7, § 10:

The Supreme Court shall have control of, and general supervision over all inferior courts and shall have further jurisdiction as follows:

APPELLATE JURISDICTION: CRIMINAL. The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed.

Article 7, § 42:

GRAND JURY: DISTRICT JUDGES, AUTHORITY IN CRIMINAL CASES

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The district judges shall have authority to try at any time misdemeanors, and, when the jury is waived by the defendant, all cases not capital or necessarily punishable at hard labor, and to receive pleas of guilty in all cases less than capital.

Article 7, § 83:

ORIGINAL JURISDICTION. The Criminal District Court for the Parish of Orleans shall have exclusive jurisdiction of the trial and punishment of all crimes, misdemeanors and offenses committed within the Parish of Orleans, the jurisdiction of which is not vested by this Constitution in some other court.

APPELLATE JURISDICTION. It shall have appellate jurisdiction of all cases tried before the Juvenile Court for the Parish of Orleans and the Recorders' Courts of the City of New Orleans, as provided in this Constitution. Said appeals from the Recorders' Courts shall be on the law and the facts and shall be tried upon the records made and the evidence offered in said courts by the Judge to whom the appeal shall be allotted. In all cases tried before the judges of the said Criminal District Court in which an appeal does not lie to the Supreme Court, and in cases tried before the Juvenile Court, an appeal shall lie on questions of law and fact to two or more of the judges of the said Criminal District Court, as may be prescribed by said Court; and the Court shall adopt rules regulating the manner of taking and hearing and deciding said appeals.

Louisiana Revised Statutes

14:107:

The following persons are and shall be guilty of vagrancy:

1. Habitual drunkards; or
2. Persons who live in houses of ill fame or who habitually associate with prostitutes; or
3. Able-bodied persons who wander about and solicit alms as a business, provided that this article shall not apply to persons soliciting for bona fide religious, charitable or eleemosynary organizations with the authorization thereof; or
4. Habitual gamblers or persons who for the most part maintain themselves by gambling; or

5. Able-bodied persons without visible lawful means of support who do not seek employment; or

6. Able-bodied persons who obtain their support gratis from persons receiving old age pensions or old age assistance from the State; or

7. Persons who frequent the street habitually at late or unusual hours of the night, or who loiter around any public places of assembly without visible or lawful business; or

8. Persons who are found in or near any structure, movable, vessel, or private grounds, without being able to account for their presence therein; or

9. Prostitutes.

Whoever commits the crimes of vagrancy shall be fined not more than one hundred dollars, or imprisoned for not more than six months, or both.

15:49:

A warrant of arrest is an order in writing, issued and signed by a competent judge in the name of the State, stating the crime or violation of ordinance charged against the person to be arrested and commanding a peace officer to deliver him to answer to said charge.

15:50:

The warrant shall specify the name of the person to be arrested, but if it be unknown he may be designated by any name. The warrant shall be dated and shall set out the official capacity of the judge issuing and signing the same. If the charge be such that the accused is entitled to a preliminary examination, the warrant shall direct that he be brought before the judge having authority to sit as a committing magistrate, otherwise that he be brought before the judge having trial jurisdiction.

15:52:

Every judge vested with criminal jurisdiction, whether as a trial judge or as a committing magistrate, and every judge vested with jurisdiction to try violators of parochial or municipal ordinances, has authority to issue a warrant for the arrest of any person found within the state charged with a breach of the peace or with crime, whether such person be charged with the commission of a crime within the state or with being a fugitive from the justice of another state or of a foreign country, and for the arrest of all persons charged with the violation of any ordinance; provided that no warrant of arrest shall issue except upon the indictment by a grand jury, the information of the district attorney, or the affidavit of a credible witness setting out distinctly the charge against the person to be arrested.

15:53:

Whenever any person shall be accused by the oath of any credible person of any crime, breach of the peace or violation of any parochial or municipal ordinance, the judge before whom the accusation is brought shall receive the complaint and cause a warrant to issue, directing that the accused be arrested and brought before the court of competent jurisdiction.

15:54:

Every judge, whether of trial or of committing jurisdiction, shall, before issuing the warrant of arrest, require of the person making an affidavit of the commission of any crime or the violation of any ordinance, a statement, to be embodied in the affidavit, specifying to the best of the knowledge and belief of the affiant, the name and surname of the offender and of the person injured, and the date and place of the offense.

15:59:

Except as otherwise provided under this Part, no arrest can legally be made, except in obedience to a legal warrant.

15:60:

Any peace officer may, without a warrant, arrest a person:

(1) For the commission of any felony or misdemeanor committed in his presence;

(2) When such person has committed a felony although not in the presence of the officer;

(3) When a felony in fact has been committed and he has reasonable cause to believe that such person has committed it;

(4) When he has reasonable cause to believe that a felony has been committed and reasonable cause to believe that such person has committed it;

(5) When he has received positive information by written, telegraphic or other authoritative source that another officer holds a warrant for such arrest.

15:62:

To justify an arrest for any misdemeanor, breach of the peace, or violation of any ordinance committed or attempted in the presence of him making the arrest, said arrest must be made at the time of such commission, or of such attempt, for, except for felony, no one can legally make an arrest, without a warrant, for any thing previously done or attempted in his presence.

15:70:

When arresting a person, without a warrant, the officer making the arrest shall inform the person arrested of his authority and the cause of the arrest, except when the person arrested is engaged in the commis-

sion of a criminal offense, or if he flees or if he forcibly resists arrest before the officer has time to inform him. The return of the officer making the arrest, indorsed upon the warrant upon which the accused person shall be subsequently held, affirming compliance with the provisions herein, shall be prima facie evidence of the fact in the trial of any criminal cause.

15:77:

Every peace officer making an arrest or who shall have turned over to him any person arrested by a private person and any person making an arrest of another person shall immediately conduct the person arrested to the nearest jail or police station and then and there cause to be entered on the book to be kept for that purpose the name of the prisoner and the crime or violation of ordinance charged against him and for which he shall have been arrested. Said book shall always be kept open for the inspection of the public, and the officer in charge shall furnish without cost a certified copy of the entry thereon to any person desiring such copy.

All persons arrested shall, from the moment of their arrest, be entitled to confer with counsel, and shall not be placed in solitary confinement in any jail or precinct station, and denied the right to confer with counsel. They shall be given the right and privilege of using the telephone in the jail or station or send a messenger for the purpose of communicating with counsel and with his friends and relatives for the purpose of securing counsel. They shall also have the right and privilege of using the telephone in the jail or station or send a messenger for the purpose of communication with any person, firm or corporation in order to secure their release by bail or parole and such person, firm or corporation when contacted or communicated with shall have the right to visit said arrested person within a reasonable time, if not charged with a crime in which no release or bail is allowed by law.

No peace officer or other person making an arrest shall neglect, fail or refuse to immediately conduct the person arrested to the nearest jail or police station and immediately cause him to be booked. Such neglect or refusal shall be prima facie evidence and proof of violation of this Section.

Whoever violates this Section shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not more than two years, or both.

This section shall not be construed as in any wise intending to deprive or divest the superintendent of police of the City of New Orleans of the right to release upon his own responsibility any prisoner, at any time previous to his actual arraignment in open court. As amended Acts 1950, No. 386, § 1.

15:78:

The judges and other magistrates of all courts having criminal jurisdiction throughout the State, are hereby vested with jurisdiction over any person arrested for any crime or for the violation of any ordinance under and within their respective jurisdictions, from the moment said person is arrested and taken into custody by a peace officer, with power and authority to immediately parole or release on bail such person so arrested over whom they have jurisdiction as aforesaid, provided the offense charged be bailable.

15:79:

As soon as the person arrested without a warrant shall have been brought before the judge, the judge shall, unless an affidavit be then made setting forth the charge against the prisoner, order him forthwith to be discharged from custody.

15:80:

When any person shall have been arrested without a warrant, the peace officer, after he shall have caused him to be booked, shall bring him, without unnecessary

delay, if the charge be such as to entitle the accused to a preliminary examination, before the judge having authority to sit as a committing magistrate in the case, otherwise, before the judge having trial jurisdiction thereof.

15:81:

As soon as the person arrested without a warrant shall have been brought before the judge, the judge shall, unless an affidavit be then made setting forth the charge against the prisoner, order him forthwith to be discharged from custody.

15:82:

When the person arrested, with or without a warrant, shall be brought before the judge, the judge shall remand him for preliminary examination, if the accused be entitled to such examination, otherwise for trial, and shall, if the charge be bailable, order the release of the accused upon such bail as the judge shall then and there fix; if the said bail be not furnished or if the crime charged be capital, the judge shall commit the accused to prison until delivered in due course of law; provided that every commitment shall be signed by the judge, shall substantially set out the offense of which the accused is charged, and, if the offense be bailable, shall fix the amount of bail . . .

15:91:

The order admitting to bail may issue on the judge's own motion; it must be in writing, it must fix the amount of the bail-bond, designate the officer authorized to accept the sureties tendered by the person to be bailed and must be signed by the judge of the court before which it is the legal duty of the person to be bailed to appear; provided that whenever a committing magistrate shall commit any accused to the district court for trial, or shall bind over any one to appear before the district court as a witness, such

committing magistrate is authorized to fix the amount of the bail-bond for the appearance of such accused or of such witness before the district court at such time as it shall be the legal duty of such accused or of such witness to appear, nor shall any other or additional bail be required in the district court, unless the judge of such court shall deem other or additional bail necessary.

15:92:

The order admitting to bail is a special order, and the amount of bail must be specially fixed in each case, hence any general order authorizing the sheriff, or other officers, to take bail and fixing the amount thereof at a certain sum for particular crimes is illegal, and any bail-bond taken under such an order is of no effect.

15:113:

The writ of habeas corpus is an order in writing, issued in the name of the State, by a judge of competent jurisdiction, and directed to the person who has another in his custody, or detains him in confinement, commanding him to bring before the judge the person thus detained, at the time and place appointed in the writ, and to state the reason for which he thus keeps him imprisoned and deprived of liberty.

15:121:

The competent judge to whom the petition is presented shall immediately grant a writ of habeas corpus, unless it appear by the petition itself, or by the documents annexed to it, that the relator can neither be set at liberty nor admitted to bail.

15:123:

The writ may be served by any person capable of giving evidence.

15:127:

The person on whom a writ of habeas corpus shall have been served, whether it be directed to him or not, shall at the time and place designated in the writ, produce the relator and make a written return to said writ.

15:128:

The person upon whom a writ of habeas corpus shall have been served shall declare positively in his return:

(1) Whether he has or has not the relator in his power or custody, or under his restraint;

(2) If he has the relator in his power or custody, or under his restraint, he shall state the authority and cause of such imprisonment or restraint.

15:130:

If the relator be kept in custody by virtue of a judicial order the original of that order shall be annexed to the return.

15:131:

The return shall be signed by the person making it, and except when such person is duly sworn and qualified public officer, and make such return in his official capacity, it must be verified by his oath.

15:132:

The return shall be made within twelve hours after the service of the writ, or sooner, if so ordered by the writ; provided, that whenever a writ of habeas corpus shall have been granted by the Supreme Court, or by any justice thereof, upon the application of any person held in custody outside of the Parish of Orleans, the return shall be made within three days after the service of the writ or sooner if so ordered by the writ.

15:134:

At the time and place fixed in the writ for the return thereof, the judge shall proceed summarily to hear such legal evidence and reasons as may be adduced, as well by the party confined as by the party confining, and shall, after a full and fair hearing, discharge or refuse to discharge the relator from custody, as the justice of the case may require.

15:135:

At the hearing of the return, the relator shall have the right, by legal evidence, to controvert or disprove any material fact or matter set forth in the return, and to prove any fact showing either that his imprisonment or detention is unlawful or that he is entitled to his discharge.

15:137:

If, after the hearing of the return, it appears that the relator is confined by the order of some court, he can be restored to liberty only in the following cases:

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(7) When the relator has been committed on a criminal charge without reasonable or probable cause.

15:154:

Either the State or the defendant shall have the right to demand a preliminary examination; provided that after an indictment found or an information filed, it shall be wholly within the discretion of the district court, and not subject to review by any other court, to order or to refuse to order a preliminary examination; nor shall such examination be held in any case in which the offense charged is within the trial jurisdiction of any city or municipal court.

15:340:

Every misdemeanor shall be triable by a judge without the intervention of a jury.

15:321:

Every application for a continuance shall be by written motion alleging specifically the grounds upon which it is based. The allegations of the motion when made on behalf of the accused, must be sworn to by him or his counsel.

15:323:

Every motion for a continuance shall be tried summarily and contradictorily with the opposite party, and unless the evidence shows to the satisfaction of the Court that mover is entitled to a continuance, the Court shall order the trial to be proceeded with forthwith.

15:341:

A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both.